

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

PAUL A. LEE,

Petitioner,

v.

CIVIL ACTION NO. 1:10CV176
(Judge Keeley)

UNITED STATES OF AMERICA,

Respondent.

ORDER ADOPTING REPORT AND RECOMMENDATION (DKT. 4)
DENYING § 2241 PETITION AND DISMISSING CASE WITH PREJUDICE

The petitioner, Paul A. Lee ("Lee"), filed this pro se action pursuant to 28 U.S.C. § 2241, alleging various defects in his underlying conviction for drug offenses. The Court referred the case to United States Magistrate Judge James E. Seibert, who, in a Report and Recommendation ("R&R"), concluded that the petition should be dismissed as it fails to state a claim under § 2241.

Lee filed objections to the R&R, but they only affirm that his grievance is with the manner in which his sentencing court imposed a term of incarceration and supervised release. After considering Lee's objections, the Court agrees that the petition challenges not the execution of his sentence,¹ but the legality of his underlying conviction. These types of claims cannot be brought under § 2241 except in certain circumstances, none of which Lee asserts. Lee's

¹In fact, Lee has already left the custody of the Bureau of Prisons, likely rendering any § 2241 claim he theoretically could have possessed moot.

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challenges in this case are of the type that must be asserted in a petition pursuant to 28 U.S.C. § 2255. Accordingly, the Court **ADOPTS** the R&R (dkt. 4) in its entirety, **DENIES** the petition for a writ of habeas corpus, and **DISMISSES** this case **WITH PREJUDICE**.

It is so **ORDERED**.

The Court directs the Clerk to strike this case from the active docket, prepare a separate judgment order, and transmit copies of both orders to counsel of record and to the pro se petitioner via certified mail, return receipt requested.

DATED December 16, 2010

/s/ Irene M. Keeley
IRENE M. KEELEY
UNITED STATES DISTRICT JUDGE